

BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and
Petition to Revoke Probation Against:

JAMES C. COGELAN,

Respondent.

Case No. D1 2006 19

OAH No. 2015040465

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Veterinary Medical Board as its Decision in the above-entitled matter.

This Decision shall become effective on

March 17, 2017

IT IS SO ORDERED this

11th

day of

February 2017

By:

Cheryl Watkinson

BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation
and Third Amended Petition to Revoke
Probation Concerning:

JAMES C. COGHLAN, D.V.M.,

Veterinarian License No. VET 9742,

Respondent.

Case No. D1 2006 19

OAH No. 2015040465

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on December 5, 6, 7, 8, and 9, 2016.

Deputy Attorney General Karen L. Gordon, Department of Justice, State of California, represented complainant, Annemarie Del Mugnaio, the Executive Officer of the Veterinary Medical Board, Department of Consumer Affairs, State of California.

Bonnie L. Lutz, Esq. represented respondent, James C. Coghlan, D.V.M., who was present throughout the hearing.

The matter was submitted on December 8, 2016.

FACTUAL FINDINGS

1. On September 1, 1987, Veterinarian License No. VET 9742 was issued to respondent.
2. On November 20, 1990, a premises license was issued to 17th Street Animal Hospital, with respondent as the managing licensee.

History of Discipline

3. On October 29, 2008, an amended accusation was filed against respondent in Case No. AV 2006 19. The amended accusation alleged 16 causes for discipline. In respondent's eventual stipulation in settlement of the amended accusation respondent admitted the following 14 violations: (1) an August 3, 2004, misdemeanor criminal conviction for violating Vehicle Code section 23152, subdivision (b) (driving a motor vehicle with 0.08 percent or more of alcohol in his blood) ; (2) an April 21, 2004, misdemeanor criminal conviction for violating Vehicle Code section 12500, subdivision (a) (driving without a license); (3) violating Business and Professions Code sections 4081 and 4883, and Code of Federal Regulations section 1304.22 (failing to keep an accounting of controlled substances); (4) violating Business and Professions Code sections 4850 and 4883 (failing to display license in principal place of business); (5) violating Business and Professions Code section 4883 and California Code of Regulations, title 16, section 2030, subdivision (d)(3) (failing to post a notice that no staff were on the premises after hours); (6) violating Business and Professions Code section 4883 and California Code of Regulations, title 16, section 2030, subdivision (e) (failing to post referral for emergency treatment after hours); (7) violating Business and Professions Code sections 4883 and 4342 and California Code of Regulations, title 16, section 2030, subdivision (f)(6) (keeping expired drugs in the clinic); (8) violating Business and Professions Code sections 4883 and 4081 and California Code of Regulations, title 16, section 2032.3 (failing to document in patients charts the amounts of controlled substances given to the patients); (9) violating Business and Professions Code sections 4883 and 4081 and California Code of Regulations, title 16, section 1304.22 (failing to keep complete and accurate controlled substances logs); (10) violating Business and Professions Code sections 4081 and 4883, and Code of Federal Regulations section 1304.11 (failing to reconcile drug inventory with controlled substances log); (11) violating Business and Professions Code section 4883 and California Code of Regulations, title 16, section 2030, subdivision (g)(1) (improperly placing an autoclave in his surgical suite); (12) violating Business and Professions Code section 4883, and Code of Federal Regulations section 1301.75 (improperly securing controlled substances); (13) violating Business and Professions Code sections 4081 and 4883, and Code of Federal Regulations section 1304.22 (failing to properly account for controlled substances); and (14) violating Business and Professions Code sections 4846.4, 4883, and 4885 (failing to report his August 3, 2004, conviction on his June 27, 2006, renewal application).

4. On December 14, 2010, respondent entered into a "Stipulated Settlement and Disciplinary Order" with Deputy Attorney General Karen L. Gordon, counsel for the Executive Officer the Board. The stipulation in settlement of the amended accusation in Case No. AV 20056 19 was adopted by the board and became effective on May 6, 2011. Pursuant to the stipulated settlement, respondent admitted the violations set forth in Finding 3, above, and he was placed on probation for four years under terms and conditions designed to protect the public, some of which are discussed in the "Third Amended Petition to Revoke Probation" section, below, beginning with Finding 23.

Factual Findings Concerning the First Amended Accusation

5. The first amended accusation seeks discipline against respondent based on his care and treatment of two dogs, Luna and Hestia.

Luna

6. Luna, a Maltipoos dog, began treatment at respondent's clinic on May 6, 2011. The morning of March 14, 2012, the owner's grandmother brought Luna to respondent's clinic for an ovariohysterectomy procedure. The owner's grandmother told employees at the clinic that Luna may be pregnant and, if so, the owner wanted to be notified so she could cancel the procedure. Staff told the owner's grandmother that the surgery was scheduled to start at noon and that the owner should call in at noon to check on Luna's status. At 11:06 a.m. the owner was notified that the surgery was over and that she would be charged an extra \$108.00 for the procedure because Luna was pregnant. The owner and her husband were extremely mad and upset so they filed a complaint with the board. Based on the complaint, Luna's medical records were obtained and reviewed by an expert, Lane W. Johnson D.V.M.

7. Dr. Johnson's review of Luna's medical records resulted in the following findings:

Review of the information and medical records provided do not support an unprofessional conduct violation. There are several other violations present in this case. This dog [Luna] was first seen by respondent on 5/6/2011. The record is illegible and no doctor initials are present to determine if an appropriate VCPR [veterinarian-client-patient relationship] was established prior to administering vaccinations. On 1/25/2012 the dog was seen for a skin condition. Incomplete history and physical exam findings are documented and no diagnosis is given. The day of surgery there is no documentation of a physical examination, no anesthetic protocol or drug dosages documented and no post[-]operative instructions to the client are documented. The information provided by the complainant [the owner] indicates a general lack of communication within this practice and with the clientele that should be addressed.

VIOLATIONS [of California Code of Regulations, title 16]

Section 2032.1: Failure to establish a VCPR prior to administering vaccine at first visit

Section 2031.3.a: Records generally illegible

Section 2032.3.a.1: No doctor initials

Section 2032.3.a.6: No history 1/25/2012

Section 2032.3.a.7: No physical exam findings 5/6/2011,
1/25/2012, and 3/14/2012

Section 2032.3.a.9: No anesthetic protocol, drugs, dosages and
monitoring 3/14/2012

Section 2032.3.a.10: No diagnosis 5/6/2011, 1/25/2012 and
3/14/2012

Section 2032.3.a.12: No instructions to clients for post-operative
care 3/14/2012

RECOMMENDATION:

I recommend a citation and fine in this case for the above listed
violations. (Exh. 11)

Dr. Johnson's testimony was consistent with the above quoted portions of his expert report.

8. Respondent's testimony concerning Luna is summarized as follows: He was not at the clinic on May 6, 2011, and the chart notes are not in his handwriting; he did not recognize the handwriting but he could tell a physical examination was done because in the code section of the chart "Ex" is written; on January 25, 2012, "Ex" was written in the chart indicating a physical examination was done and there is a note saying "warm-over vag. Area"; on May 14, 2012, respondent saw Luna and performed a physical examination the results of which are noted in the left-hand margin of the chart note and in the anesthesia/surgery report¹; respondent initialed the anesthesia/surgery report and the report contains physical examination findings, anesthetic protocol, drugs, dosages and monitoring notes; and he "believes post-operative instructions were sent with Luna" but "no copy was put in his [Luna's] records."

9. The evidence presented concerning Luna proved the following by clear and convincing evidence: Whomever saw Luna on May 6, 2011, failed to establish a veterinarian-client-patient relationship with Luna; and overall, on some of the visits Luna's chart notes were not legible and did not contain a veterinarian's signature or initials; additionally, on some of the visits there are no physical examination findings or diagnoses; and no post-operative instructions were provided to Luna's owner.

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¹ According to respondent the anesthesia/surgery records (Exhibit F) were not provided to the board with the rest of Luna's records. Respondent testified that "the office manager sent them [Luna's medical records] and excluded these [Exhibit F-the anesthesia/surgery records] through inadvertence."

Hestia

Hestia's owner's testimony led to the findings set forth in paragraph 10- 20, below.

10. Hestia, a Neopolitan Mastiff, was born on September 24, 2004. Eric Renezeder, a real estate broker/consultant, purchased Hestia from a local pet store. At some point Hestia began having "a difficult time with bowel movements and was allergic to greens." Mr. Renezeder took Hestia to several specialists and Hestia was placed on a special diet. Sometime prior to December 29, 2012, Hestia "began shaking violently" so Mr. Renezeder took him to respondent's 17th Street clinic. Dr. V. was the veterinarian who attended to Hestia. Dr. V. gave Hestia a "BBD injection under the skin" and prescribed medications. Hestia improved, however, after one week the symptoms returned. Hestia was "breathing heavily and salivating." Mr. Renezeder took Hestia back to respondent's clinic. Dr. V. was not available so Hestia was seen by Dr. M. Dr. M. thought that Hestia may have something stuck in his salivary gland and should have the gland removed. Dr. M. treated Hestia with medications and Hestia began improving.

11. On February 26, 2013, Hestia returned to respondent's clinic and was examined and treated by respondent. Respondent believed Hestia may have a foreign body "not in the salivary gland but somewhere else." Respondent treated Hestia for infection by ordering a complete blood count (CBC) and prescribing "Moxicylin and Flagyl to kill the infection." Hestia's condition continued to deteriorate so respondent recommended surgery to "flush out whatever was in Hestia's neck cavity with some type of pressure." After the surgery respondent told Mr. Renezeder that no foreign body was found, "but Hestia's body would encapsulate the foreign body and reject it through the point of entry." Mr. Renezeder asked if Hestia's condition could be due to cancer. Respondent told Mr. Renezeder that the "chances of cancer were extremely remote, maybe one percent, and although he could not rule out the possibility, it was not likely or within the realm of consideration."

12. On April 25, 2013, respondent performed endoscopic surgery on Hestia. Nothing was found. Respondent mentioned the possibility of another surgery and mentioned the fact that he was concerned that "the foreign object was in a dangerous area for surgery."

13. On June 20, 2013, Hestia returned to respondent's clinic because she was "lethargic and appeared to be dying." Respondent gave Hestia some injections during this visit.

14. On June 29, 2013, respondent re-evaluated Hestia. Based on the re-evaluation respondent told Mr. Renezeder that "the foreign body was in a very strange place."

15. On July 2, 2013, Mr. Renezeder boarded Hestia at respondent's clinic while he went on a trip to Las Vegas. Mr. Renezeder was planning to return from Las Vegas on July 6th. Mr. Renezeder boarded Hestia with respondent so that respondent and his staff could monitor Hestia and see if they could discover exactly what was wrong with her. Respondent and Mr. Renezeder had been discussing the possibility of another surgery and respondent was supposed to

call Mr. Renezeder in Las Vegas when he determined the way he needed to proceed with Hestia's treatment. Mr. Renezeder left an electrical cooler/refrigerator containing Hestia's special diet food in it so that Hestia could be fed food that did not cause any adverse reactions. In sum, respondent was supposed to make sure Hestia was fed her "special food" and medically reassess her.

16. On July 6, 2013, Mr. Renezeder returned to respondent's clinic to retrieve Hestia. When he saw Hestia he was shocked by her condition. She had a "shaved neck and a massive, about nine-inch [sutured] incision." As it turned out, respondent had performed surgery on Hestia without notifying Mr. Renezeder and/or getting his permission/authorization for the surgery. Respondent told Mr. Renezeder that Hestia had cancer. Mr. Renezeder also discovered that the electric refrigerator with Hestia's special diet inside had been "dropped in water and the food was destroyed." Hestia had been fed "canned food" without Mr. Renezeder knowing about the situation. Mr. Renezeder also discovered that Hestia had been fed the morning of her surgery, July 4, 2013.

17. On July 7, 2013, Hestia's "stitches began unraveling." There was "massive bleeding and I [Mr. Renezeder] tried to bandage the incision area."

18. Mr. Renezeder contacted Dr. M. and took Hestia to respondent's clinic to be seen by Dr. M. Dr. M. "admonished me [Mr. Renezeder] for not following his advice to remove Hestia's salivary gland."

19. On November 21, 2013, Hestia died. Mr. Renezeder obtained Hestia's medical records from respondent's clinic, reviewed the records, and then filed a complaint with the board.

20. During the instant hearing, Mr. Renezeder was shown medical records concerning Hestia that he had not received from respondent's clinic with the records provided to him prior to his having filed his complaint with the board. Mr. Renezeder testified that he "believes some of the records were created after the fact."

21. This matter, along with the Luna matter, was reviewed by board expert Lane W. Johnson, D.V.M. Dr. Johnson reached the following opinions/conclusions about respondent's care and treatment of Hestia, as reflected by her medical records: As with Luna, respondent failed to establish a veterinarian-client-patient relationship with Hestia; respondent failed to prepare legible records concerning Hestia for a March 7, 2013, visit to respondent's clinic; respondent failed to prepare records containing the treating doctor's name or initials for Hestia's February 27, March 1, 7, 21, 28, April 19, 25, May 29, and July 4, 2013, visits; respondent failed to prepare legible records concerning pertinent information regarding a radiographic evaluation on April 25, 2013, and a biopsy report evaluation on July 7, 2013; respondent failed to provide legible records containing complete information in the March 7, 2013, anesthesia and surgery report by failing to include the Ketamine/Valium dose; respondent failed to prepare legible records in the April 25, 2013, anesthesia and surgery report by failing to include the route of administering the Ketamine/Valium; respondent was negligent in the practice of veterinary medicine for prescribing

repeated anti-microbial therapy without a diagnosis and sufficient response to the therapy; and respondent was incompetent in the practice of veterinary medicine for failing to perform a physical examination within 12 hours of anesthesia following Hestia's surgeries on April 25, 2013, and July 4, 2013.

22. Respondent and his expert, Dr. Ronald Kelpé, D.V.M., testified in respondent's defense. In large part, Dr. Kelpé relied on the anesthesia and surgery reports in Exhibits F and I, documents that were not provided to the board along with the original records concerning Luna and Hestia.² When shown the anesthesia and surgery reports in Exhibit I during the hearing, the board's expert, Dr. Johnson, testified that she had not seen the surgical/surgery records "before today [December 6, 2016]." This in conjunction with Mr. Renezeder's testimony about his suspicion that some of the documents ultimately provided by respondent had been created "after the fact" (See finding 20), cast suspicion on the authenticity of the anesthesia/surgery records; thus, those records were accorded no weight.

Additionally, respondent's demeanor and testimony during the hearing indicated that he was not being truthful. For example, he testified that when Mr. Renezeder boarded Hestia with him on July 2, 2013, he knew that surgery was going to be performed on Hestia. According to respondent, Mr. Renezeder signed a consent for surgery when he left Hestia in his custody and care on July 2, 2013. That testimony was belied by the "consent" form itself. That form stated, in pertinent part: "Boarding & possible Sedation." If surgery was already anticipated, the "consent form" would not refer to "possible sedation." It is inconceivable that surgery was planned but there was only a possibility anesthesia would be used. The only reasonable interpretation of the consent form coincides with Mr. Renezeder's testimony that Hestia was boarded with respondent for observation and a determination of whether surgery might be necessary. According to Mr. Renezeder, if respondent's observations indicated that surgery should be performed, Mr. Renezeder would be contacted so that surgery could be discussed. This is only one example of respondent's lack of candor. He also testified that the February 27, 2013, chart entry had no

² On April 13, 2012, the board notified respondent that it had received a complaint concerning his care and treatment of Luna. In that correspondence respondent was notified of the following:

You are required to submit the following:

A. A copy of the entire medical record, including any laboratory reports. A typewritten copy of the medical records must be submitted with handwritten records. Please disclose any abbreviations or codes used in the records. . . . (Exh. , AGO-0007)

On May 28, 2014, respondent was sent a letter concerning Hestia. That letter contained the same requirements quoted above.

preliminary diagnosis, he only had a "rule out list" but no diagnosis that day, later during his testimony, at the prompting of his attorney, he referred to the "rule out list" as a tentative diagnosis. Consequently, it was concluded that respondent lacked credibility and his testimony was given little or no weight.

Similarly, respondent's expert's opinions were given little or no weight because, although the expert testified that he had not discussed the case with respondent, he was provided with, and considered, those discounted anesthesia and surgery reports that were found lacking in authenticity.

Factual Findings Concerning the Third Amended Petition to Revoke Probation

Following are the relevant conditions of respondent's probation and a discussion of respondent's violations of those conditions.

23. Probation Condition 1: Obey all Laws

"Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine."

Respondent violated this condition based on the factual findings and legal conclusions concerning the First Amended Accusation (violations of the laws and regulations substantially related to the practice of veterinary medicine) as set forth herein; and, based on his other probation violations, as set forth below.

24. Probation Condition 2: Quarterly Reports and Interviews

Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation

At the beginning of this hearing respondent admitted to violating this condition on several different occasions. In his signed stipulation respondent admitted that he was late in submitting the following quarterly reports: His July 5, 2012, report was submitted on August 14, 2012; his October 5, 2012, report was submitted on May 28, 2013; his April 5, 2013, report was submitted on May 28, 2013, along with his October 5, 2012, report; his July 5, 2013, report was submitted on March 5, 2014; his October 5, 2013, report was submitted on November 26, 2013; his January 5, 2014, report was submitted on March 5, 2014; his April 5, 2014, report was submitted on May 16, 2014; and his October 5, 2014, report was submitted on November 3, 2014. He also admitted that he did not submit a report for the April through June 2014 quarter.

25. Respondent offered many excuses during his testimony; however, given the number of violations (eight out of sixteen reports were late and one not submitted) his excuses were unavailing.

26. Probation Condition 18: Abstention from Alcohol Use

“Respondent shall abstain completely from the use of alcoholic beverages.”

Probation Condition No. 16 required respondent to report for alcohol and drug testing, as directed by the board or its designee. As set forth below, respondent did not comply with Condition 16, however, out of the times he reported for testing he tested positive for alcohol 24 times between October 3, 2014, and September 27, 2016. 23 tests were positive for the presence of EtG³ and one was positive for PEth.⁴ Those positive test results were as follows:

1) October 3, 2014:	EtG:	6112 ng/mL ⁵	EtS ⁶ :	1899 ng/mL
2) October 27, 2014:	EtG:	9547 ng/mL	EtS:	2644 ng/mL
3) November 4, 2014:	EtG:	5560 ng/mL	EtS:	1600 ng/mL
4) January 27, 2015:	EtG:	4231 ng/mL	EtS:	1128 ng/mL
5) February 4, 2015:	EtG:	2545 ng/mL	EtS:	957 ng/mL
6) March 26, 2015:	EtG:	3688 ng/mL	EtS:	1306 ng/mL
7) April 29, 2015:	EtG:	999 ng/mL	EtS:	448 ng/mL
8) May 2, 2015:	EtG:	29,401 ng/mL	EtS:	6950 ng/mL
9) September 1, 2015:	EtG:	4960 ng/mL	EtS:	1978 ng/mL
10) September 30, 2015:	EtG:	3412 ng/mL	EtS:	350 ng/mL
11) October 9, 2015:	EtG:	1226 ng/mL	EtS:	565 ng/mL
12) October 13, 2015:	EtG:	1841 ng/mL	EtS:	364 ng/mL
13) November 3, 2015:	EtG:	7869 ng/mL	EtS:	2938 ng/mL
14) March 18, 2016:	EtG:	5269 ng/mL	EtS:	418 ng/mL
15) April 7, 2016:	EtG:	3649 ng/mL	EtS:	618 ng/mL
16) April 20, 2016:	EtG:	1850 ng/mL	EtS:	101 ng/mL
17) June 28, 2016:	EtG:	739 ng/mL	EtS:	204 ng/mL
18) July 11, 2016:	EtG:	1350 ng/mL	EtS:	489 ng/mL
19) July 26, 2016:	EtG:	1116 ng/mL	EtS:	379 ng/mL

³ “EtG” stands for Ethyl Glucuronide, a direct biomarker indicating ethanol/alcohol being present in the urine tested.

⁴ “PEth” stands for Phosphatidylethanol, a direct biomarker. This test is a more accurate biomarker and is used to be certain that a person has consumed alcohol.

⁵ “ng/mL” is an abbreviation for nano grams per milliliter

⁶ “EtS” stands for Ethyl Sulfate and is another direct biomarker used to detect alcohol in the urine. The EtS test is used to confirm a positive EtG test.

20) August 16, 2016:	EtG: 508 ng/mL	EtS: 253 ng/mL
21) August 29, 2016:	EtG: 307 ng/mL	EtS: 99 ng/mL
22) September 7, 2016:	EtG: 935 ng/mL	EtS: 307 ng/mL
23) September 22, 2016:	EtG: 2290 ng/mL	EtS: 857 ng/mL
24) September 27, 2016:	<u>PEth: 302 ng/mL</u> (bold in original)	

Respondent testified that the above listed positive test results must have been the result of extraneous alcohol exposure because, he had not consumed any alcoholic beverages since he was placed on probation. For example: Drinking KombuchaTea; using Purell (a hand sanitizer containing alcohol); consumption of large amounts of sauerkraut and the subsequent fermentation of the sauerkraut in his system; using Scope (a mouthwash); taking certain "daily supplements"; using Cognac for cooking; eating sushi; and other similar use of products containing alcohol or that may ferment into alcohol.⁷

27. Respondent's claim that the positive tests resulted from extraneous alcohol exposure was refuted by the testimony of two experts and a 2012 revised Substance Abuse and Mental Health Services Administration (SAMHSA) "Advisory."

28. The SAMSHA Advisory relied upon by both parties, indicated that if the detected EtG cutoff value was high enough, the EtG test could be relied upon to indicate alcohol consumption as opposed to extraneous alcohol exposure. In pertinent part the SAMSHA Advisory provided:

Because of the common use of EtG to document abstinence in various settings and the grave consequences for false positive, much attention has been given to the cutoff values of EtG. Although further research is needed before firm cutoffs for EtG can be established, sufficient research had been completed to reach the following conclusions [footnote omitted]

- * A "high" positive (e.g., >1,000 ng/mL) may indicate:
 - Heavy drinking on the same day or previously (e.g., previous day or two).
 - Light drinking the same day.
- * A "low" positive (e.g., 500-1,000 ng/mL) may indicate:
 - Previous heavy drinking (previous 1-3 days).
 - Recent light drinking (e.g. past 24 hours).

⁷ This testimony was also considered in determining that respondent's testimony lacked credibility.

- Recent intense "extraneous" exposure (within 24 hours or less).

* A "very low" positive (100-500 ng/mL) may indicate:

- Previous heavy drinking (1-3 days).
- Previous light drinking (12-36 hours).
- Recent "extraneous" exposure.

29. Two experts, James L. Ferguson, D.O., DFASAM, and Thomas Aucoin, Ph.D, testified in this proceeding. Both agreed with the SAMSHA Advisory. Additionally, both experts agreed that respondent's September 27, 2016, PEth result of 302 ng/mL could not have resulted from anything other than "significant alcohol consumption."

a) Dr. Ferguson, the Medical Director of Recovery Management Services, FirstLab, Inc. testified that in respondent's case, not only did 18 of the 23 positive test results contain EtG's of over 1000 ng/mL ("High Positives"), the fact that the EtS tests in all 23 tests were also positive "is significant" and indicative of "substantial alcohol consumption" and could not have been caused by consumption of KombuchaTea or any of the other extraneous sources mentioned by respondent. As Dr. Ferguson noted, "Here we are looking at abstinence or not."

b) Dr. Aucoin, the Vice President of Laboratory Operations at Phamatech Laboratories, a Forensic Toxicologist who is certified as an expert witness in California, testified that respondent's test results were "consistent with chronic consumption of alcohol" and inconsistent with being caused by extraneous sources. Dr. Aucoin testified that "the question here is compliance with a prohibition against consuming alcohol as opposed to reaching a diagnosis" and respondent's results revealed that he was not in compliance with that prohibition. Respondent's results could only have resulted from alcohol consumption, not some other reason. The results were indicative of "ethanol consumption over a long period."

30. **Probation Condition 16:**

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. . . .

The testimony of Tina Silveira, a manager and supervisor with First Lab, along with the documents concerning respondent's testing compliance, established that on August 30, 2016, respondent was selected for testing but he failed to appear for testing on that day. His failure to appear constituted a violation of Condition 16.

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LEGAL CONCLUSIONS

Legal Conclusions Concerning the First Amended Accusation

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) Conclusions two through nine resulted from clear and convincing evidence.

2. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Findings seven and 21, respondent violated California Code of Regulations, title 16, section 2032.1, by failing to establish veterinarian-client-patient relationships with Luna and Hestia.

3. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 9, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a), by failing to prepare legible records concerning Luna containing his initials and physical examination and did not provide Luna's owner with any post-operative instructions.

4. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a), by failing to prepare legible records concerning Hestia on March 7, 2013.

5. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a)(1), by failing to prepare records containing the treating doctor's name or initials for Hestia's February 27, March 1, 7, 21, 28, April 19, 25, May 29, and July 4, 2013, visits.

6. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a)(6), by failing to prepare legible records containing pertinent information regarding a radiographic evaluation on April 25, 2013, and a biopsy report evaluation on July 7, 2013.

7. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a)(9), by failing to provide legible records

containing complete information in the March 7, 2013, anesthesia and surgery report by failing to include the Ketamine/Valium dose.

8. Cause exists for discipline under Business and Professions Code section 4883, subdivision (o), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (a)(9), by failing to prepare legible records containing complete information in the April 25, 2013, anesthesia and surgery report by failing to include the route of administering the Ketamine/Valium.

9. Cause exists for discipline under Business and Professions Code section 4883, subdivision (i), because, as set forth in Finding 21, respondent violated California Code of Regulations, title 16, section 2032.3, subdivision (b)(1), because he was negligent in the practice of veterinary medicine for prescribing repeated anti-microbial therapy to Hestia without a diagnosis and sufficient response to therapy.

Legal Conclusions Concerning the Third Amended Petition to Revoke Probation

10. In a petition to revoke probation, the standard of proof is preponderance of the evidence (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441-1442). A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) Conclusions 11 through 16 resulted from a preponderance of the evidence.

11. Cause exists for revocation of probation because, as set forth in Findings 23 through 30 and Conclusions 2 through 9, respondent failed to comply with Probation Condition 1 by violating state laws and regulations substantially related to the practice of veterinary medicine.

12. Cause exists for revocation of probation because, as set forth in Finding 24, respondent failed to comply with Probation Condition 2 by submitting eight late reports and failing to submit a report for the April through June 2014 quarter.

13. Cause exists for revocation of probation because, as set forth in Findings 26 through 29, respondent failed to comply with Probation Condition 18 by failing to abstain from the use of alcoholic beverages from October 3, 2014, through September 27, 2016.

14. Cause exists for revocation of probation because, as set forth in Finding 30, respondent failed to comply with Probation Condition 16 by failing to submit a biological fluid sample as required on August 30, 2016.

15. Cause does not exist for revocation of probation based on the allegation that respondent violated Probation Condition 17 (abstain from use of controlled substances) because no evidence was presented to support this allegation.

Analysis

16. Respondent has been unsuccessful in complying with the terms and conditions of his current probation. Additionally, respondent committed new acts justifying discipline while on probation and he was not truthful during these proceedings. Accordingly, the only discipline that will adequately protect the public is outright revocation.

ORDER

Respondent's probation is revoked and Veterinarian License No. VET 9742, issued to respondent, James C. Coghlan, D.V.M., and the premises license issued to 17th Street Animal Hospital, are revoked.

DATED: January 5, 2017

DocuSigned by:
Roy Hewitt
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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings